

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 20-
v.	:	DATE FILED:
JOSEPH SMITH	:	VIOLATIONS:
		18 U.S.C. § 1349 (conspiracy – 1 count)
	:	18 U.S.C. § 1343 (wire fraud – 2 counts)
		Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this Indictment:

1. Defendant JOSEPH SMITH, a resident of New York, was the founder and President of New York Bagel Enterprises, Inc. (“New York Bagel”), which was in the business of selling bagel franchise opportunities in multiple states, including in the Eastern District of Pennsylvania.
2. Dennis Mason, charged elsewhere, sold food service franchises as an independent contractor, primarily doing business as Franchise Ventures, Inc.
3. Starting as early as 2008, Dennis Mason sold New York Bagel franchises on behalf of Defendant JOSEPH SMITH. Dennis Mason provided information to prospective franchisees about, among other things, the cost to open a franchise, the availability of financing, and the profits made by existing franchises. Between 2008 and 2018, Dennis Mason sold more than 160 New York Bagel Franchises. These prospective franchisees paid more than \$2.1 million in franchise fees to New York Bagel.

4. The fee that prospective franchisees paid to New York Bagel ranged between \$7,500 and \$44,500. Defendant JOSEPH SMITH shared a percentage of these franchise fees with Dennis Mason.

5. Defendant JOSEPH SMITH and Dennis Mason communicated with prospective franchisees using interstate communications, including e-mails and telephone calls.

6. From in or about 2008 through on or about July 25, 2018, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOSEPH SMITH

conspired and agreed together with Dennis Mason, and other persons unknown to the grand jury, to commit wire fraud, that is, knowingly executing and attempting to execute a scheme to defraud prospective franchisees and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, in violation of 18 U.S.C. § 1343.

MANNER AND MEANS

It was part of the conspiracy that defendant JOSEPH SMITH, Dennis Mason, and others known and unknown to the grand jury:

7. Met with and spoke to prospective franchisees in the Eastern District of Pennsylvania and throughout the country.

8. Made material misrepresentations to prospective franchisees about the profitability of the franchise. In particular, defendant JOSEPH SMITH and Dennis Mason understated the startup costs, overstated the number of franchises that were up and running, overstated the success of existing franchises, and falsely promised that additional franchises would be opened in the future.

9. Placed advertisements using interstate communications, such as Craigslist.

10. Made material misrepresentations and false guarantees about the ability of New York Bagel to arrange financing for the prospective franchisee.
11. Made false and inconsistent statements to prospective franchisees.
12. Obtained franchise fees from more than 160 prospective franchisees.
13. Accepted payments of franchise fees using personal checks, cashier's checks, and credit card payments.
14. Refused to refund franchisee fees paid by prospective franchisees who learned of the material misrepresentations.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO AND THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.
2. From on or about January 1, 2008 through on or about July 25, 2018, defendant

JOSEPH SMITH

and Dennis Mason, charged elsewhere, devised and intended to devise a scheme to defraud prospective franchisees and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

3. Paragraphs 7 through 14 of Count One are incorporated here.

It was further part of the scheme that:

4. Defendant JOSEPH SMITH and Dennis Mason provided false information to prospective buyers of New York Bagel Franchises in order to obtain franchise fees, including prospective franchisee S.A.

5. Defendant JOSEPH SMITH communicated with prospective franchisees through interstate e-mail communication, including prospective franchisee S.A.

6. On or about the dates below, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOSEPH SMITH

for the purpose of executing the scheme described above, caused signals and sounds, that is an e-mail, to be transmitted by means of wire communication in interstate commerce.

COUNT	DATE	SENDER	RECIPIENT
TWO	June 4, 2016	Dennis Mason	S.A.
THREE	September 18, 2016	JOSEPH SMITH	S.A.

All in violation of Title 18, United States Code, Section 1343.

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1343 and 1349, set forth in this Indictment, defendant

JOSEPH SMITH

shall forfeit to the United States of America any property, constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violation, including, but not limited to \$707,741:

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

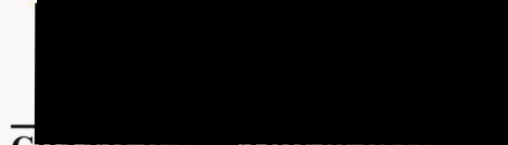
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other

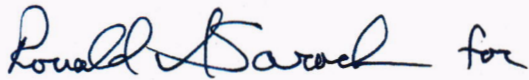
property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28 United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

A large black rectangular redaction box covering the signature of the Grand Jury Foreperson.

GRAND JURY FOREPERSON

A handwritten signature in blue ink that reads "Ronald Barock for".

**WILLIAM M. McSWAIN
UNITED STATES ATTORNEY**

No. _____

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

Criminal Division

THE UNITED STATES OF AMERICA

v.

JOSEPH SMITH

INDICTMENT

Counts

18 U.S.C. § 1349 (conspiracy – 1 count)

18 U.S.C. § 1343 (wire fraud – 2 counts)

Notice of forfeiture

Filed in open court this _____ day,
Of _____ A.D. 20 _____

Clerk

Bail, \$ _____
